

§803). Applicants respectfully traverse the restriction requirement on the grounds that the Examiner has not carried the burden of providing any reason and/or example to support the conclusion that the claims of the restricted groups are, in fact, distinct. Applicants further traverse the restriction requirement because there is clearly no additional burden on the Examiner if the restriction requirement is not made.

With regard to the claims in Group I, the Examiner has characterized these claims as "drawn to an aqueous preservation medium." The Examiner has characterized the claims of Group II as "drawn to a method of preparing an aqueous preservation medium" while the claims of Group III are characterized as "drawn to a preserved biological material composition." Finally, the claims of Group IV are characterized by the Examiner as "drawn to an aqueous preservation medium." Thus, the Examiner's own language characterizes all claims of Groups I-IV as being drawn to a preservation medium. Further, the Examiner has provided no examples or reasons as to how the claims of Groups I-IV, all characterized by the Examiner as drawn to an aqueous preservation medium or method of preparing an aqueous preservation medium, are patentably distinct. Accordingly, because the Examiner has not carried the burden of providing technologically sound reasons or examples for concluding that the claims of the restricted groups are patentably distinct, the Restriction Requirement is improper and should be withdrawn.

Moreover, Applicants note that the MPEP also states that, "If the searching and examination of the entire application can be made without serious burden, the Examiner must examine it on the merits, even though it includes claims to independent or distinct inventions." (MPEP §803, emphasis added.) Applicants respectfully point out that all of the claims of Groups I-IV recite a preservation medium comprising a polyhydroxy compound and phosphate ion. Because this is the case, there is no additional burden on the Examiner if the Restriction Requirement is not made and the entire claim set is searched in the present application. Applicants therefore submit that the rejection between the claims of Groups I-IV is improper and should be withdrawn.

Election of Species Requirement

In the same fashion as a Restriction Requirement, an Election of Species Requirement is proper only if the restricted species are independent or patentably distinct and there is no serious burden placed on the Examiner if an election is not required (MPEP §803). The burden is on the Examiner to provide reasons and/or examples to support any conclusion of patentable distinctness between the restricted species (MPEP §803). Applicants respectfully traverse the Election of Species Requirement on the grounds that the Examiner has not carried the burden of providing any reasons and/or examples to support the conclusion that the species are, in fact, distinct.

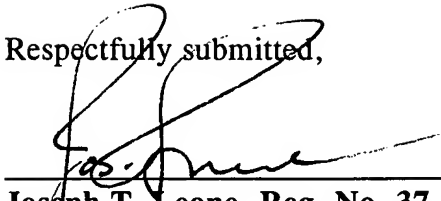
For instance, the Examiner states that "election of a specific 'aqueous preservation medium' is required." However, the Examiner provides no reasons or examples to suggest any serious burden exists without such an election. Accordingly, because the Examiner has not carried the burden of providing technologically sound reasons or examples for concluding that the species are patentably distinct, the Election of Species Requirement is improper and should be withdrawn.

Additionally, the Examiner has provided no reasons or examples to support the conclusion of patentable distinctness between the species recited in these claims. It is insufficient for the Examiner merely to identify mutually exclusive moieties and state that they are patentably distinct on that basis alone. The Examiner must supply some reason and/or examples to support the conclusion of patentable distinctness between the restricted species. Therefore, Applicants submit that the Election of Species Requirement is improper and should be withdrawn.

CONCLUSION

Applicants submit that the application is now ready for examination on the merits. Early notification of such action is earnestly requested.

Respectfully submitted,


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